[President.]

THE NAYAR REGULATION AMENDMENT BILL.

PRESIDENT: Notice of certain new amendments in connection with the Nayar Regulation Amendment Bill has just been received. The new amendments have been printed and they are very long. I think the members would need some little time to realise the full implication of these new amendments. I would like to give the House a short adjournment of about an hour, so that the members can go through the amendments and try to realise their significance before we begin to discuss them. I think the House has no objection to the proposal. We will meet again at 1 o' clock.

The Council adjourned at 12-3 P. M. and met again at 1-3 P. M.

PRESIDENT: The House will remember that, on Saturday afternoon, Clause 6 of the Bill was deleted and Clause 7 made part of the Bill. Amendments to Clause 8 were held over. That was the position when the meeting closed on Saturday evening. We shall now proceed with the amendments to Clause 8. No amendments to Clause 7 can now be considered as it has been made part of the Bill The first amendment to Clause 8 is the amendment to be moved by Mr. C. P. Kochukunju Pillai.

MR. R. KRISHNA PILLAI (*Chief Secretary to Government*): In to-day's list of amendments, we have an amendment to Clause 7.

PRESIDENT: Here is an amendment by Mr. Changanachery Parameswaran Pillai which runs as follows:—Add, at the end of the new Clause 6, the following:—

"The court shall enquire into the petition and may grant a dissolution of the marriage on proof of any of the grounds mentioned in the preceding Section: Provided that, if the respondent agrees to an order for dissolution being passed without an enquiry into the reasons for such dissolution, no such enquiry shall be held."

Mr. Parameswaran Pillai, I think by that you mean the old Clause 7. The re-numbering of Clauses will be done, after the whole Bill is taken up and discussed, by the Secretary to the Legislative Council. Evidently, therefore, you mean Clause 7, but that has been passed and made part of the Bill.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Clause 7 has been re-numbered as Clause 6.

PRESIDENT: That will be done in the course of re-numbering. The House need not re-number it. All that the House has said is that Clause 7 forms part of the Bill. That was what we decided last evening. Re-numbering is the function of the Council Secretary and it will be done after the second reading of the Bill is completed. Therefore, Mr. Parameswaran Pillai's amendment, which relates to that Clause, I am afraid, is not in order.

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MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): It may be taken as Clause 8.

PRESIDENT: You want the mistake to be treated as a clerical mistake. How will you put it? I must first take up the old amendments of which notice has already been given.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): There is another clerical error also. The amendment that I had sent up was as follows:

"*Two months after the service of the copy as aforesaid, if the petition is not withdrawn, the court shall enquire into the petition and may grant a dissolution of the marriage on proof of any of the grounds mentioned in the preceding Section: Provided that, if the respondent agrees to an order for dissolution being passed without an enquiry into the reasons for such dissolution, no such enquiry shall be held.*"

PRESIDENT: You want that to be treated as an amendment to the old Clause 8.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): The whole of Clause 8 has to be deleted.

PRESIDENT: There is no such amendment before the House.

MR. S. PARAMESVARA AIYAR (*Secretary to Government*): That is the next amendment of Mr. Changanachery Paramesvaran Pillai.

PRESIDENT: What about the old amendments on the agenda? There is for instance the amendment standing in the name of Mr. C. P. Kochukunju Pillai.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I think Mr. Kochukunju Pillai will withdraw his amendment.

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnattur*): The old Clause 8 has to be deleted. Therefore, I do not want to move that amendment.

MR. JOSEPH PANJIKARAN (*Shertallai*): I do not move the next amendment as it relates to Clause 8 of the Bill as revised by the Select Committee. That Clause has to be deleted now. Under these circumstances, I do not move it.

The following amendments were not moved:—

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnattur*): Delete the existing Clause and substitute the following:—

"Six months after the service of the copy as aforesaid, if the petition is not withdrawn in the meantime, the court shall declare in writing the marriage dissolved and then determine the amount of compensation. The dissolution shall take effect from the date of the order declaring it."

MR. JOSEPH PANJIKARAN (*Shertallai*): Delete the whole of the existing Clause and substitute the following:—

"8. (1) When the petitioner is the wife, six months after the service of the copy as aforesaid, if the petition is not withdrawn in the meantime, the court shall declare in writing that the marriage is dissolved.

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[Mr. K. Parameswaran Pillai.]

(2) (a) When the petitioner is the husband, six months after the service of the copy as aforesaid, if the petition is not withdrawn in the meantime, the court shall determine the amount of compensation payable to the wife in case the reasonableness of the amount offered is disputed.

(b) Subject to the provisions of the Code of Civil Procedure and the Limitation Regulation applicable to appeals from original decrees, an appeal shall lie to the High Court from the award of compensation or from any part of such award of the District Munsiff under this Section.

(c) When the award has become final, or six months after the service of the copy as laid down in Section 7 in case there is no dispute about the compensation offered, the compensation amount shall be paid into court by the petitioner. On such payment into court of the compensation amount, the court shall declare in writing that the marriage is dissolved.

(3) The dissolution shall, in all cases, take effect from the date of the order declaring it.

(4) Save in so far as they may be inconsistent with anything contained in this Section, the provisions of the Code of Civil Procedure shall apply to all proceedings under this Section.

(5) When an appeal is preferred under this Section, Court fee shall be levied on the value of the subject-matter in appeal under the Court Fees Regulation."

MR. M. N. PILLAI (*Tiruvandrum*): I move my amendment:—"Sub-clause (1)" Delete.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): With your permission, Sir, I beg to move that the remaining amendments to Clause 8 as per the original agenda be considered after the amendments of Messrs. K. Parameswaran Pillai and P. K. Narayana Pillai relating to Clause 8 are disposed of. The amendments of Messrs. Narayana Pillai and Parameswaran Pillai bring about radical changes in the Clause itself, and the other amendments may not arise at all if those two amendments are taken up first.

MR T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I second the proposal.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): That relates only to the order of amendments and the President has got the power.

MR. S. PARAMESVARA AIYAR (*Secretary to Government*): There is no objection to that.

PRESIDENT: That is within my discretion. I have no objection to those amendments standing over until the new amendments are discussed and disposed of

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Sir, before formally moving my amendment, I shall make a few explanatory remarks in view of the fact that this is the first time in history of Travancore that a divorce law is being enacted and also in view of the further fact that these amendments are new and the House has not had sufficient time and opportunity to study them. With the greatest respect to the House, I must submit that, at the time Mr. Govinda Menon's amendment was voted upon by the members, I am inclined to think

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that due prominence was not given to the seriousness of the amendment itself. It appears, that out of 50 members present in this House on that occasion, only 27 voted on that amendment, the remaining 23 remaining neutral. If the real seriousness of the situation had been realised, I am quite sure that this House would not have allowed an amendment which changed the character of the Nayar Society numbering about seven lakhs in Travancore to be passed, by the votes of 27 members about 50 per cent of the members remaining indifferent.

PRESIDENT: I do not know if you are in order in criticising the decision of the House.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I object to the word "indifferent." The House was not certainly "indifferent."

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I did not mean "indifferent." I meant "neutral."

PRESIDENT: I do not think you are quite in order in criticising the decision of the House which was arrived at at an earlier stage of the discussion.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I only meant to say that most of the members remained neutral. Two amendments were brought before the House, one by Mr. Hoogewerf providing for absolute prohibition of divorce and the other by Mr. Govinda Menon practically prohibiting divorce excepting under certain conditions. For various reasons, between the two amendments, I should have preferred Mr. Hoogewerf's amendment. However, this House has passed the other amendment, and the result is, we have to go into various details of private conduct, which in turn results in the washing of much dirty linen in public. Therefore, it appears to me that it has become absolutely necessary to make such amendments as are necessary for the purpose of removing the rigour of the law as it has now been enacted by this Council and to minimise the chances of enquiry into private conduct as much as possible. The object of the amendment now proposed is to introduce a new Section whereby by the consent of the defendant the need for an enquiry into the grounds for divorce is obviated. I also provide for compensation being given to the defendant when the defendant is a female irrespective of the ground for divorce unless the reason for divorce happens to be change of religion. Therefore, it amounts to this; that unless the defendant courts an enquiry into the grounds of divorce, there will be no enquiry into it at all. As soon as the defendant comes and admits that divorce may be granted, without going into the grounds, it may be granted by the court. If the defendant is woman, she would also be entitled to compensation for divorce provided she agrees for the divorce being granted without any enquiry into the grounds for the same; so that, the only case in which an enquiry will have to be made will be in the case where she does not consent to the divorce without an enquiry into the grounds for divorce. That, I submit, is the object of the amendment which I have sought to introduce.

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[Mr. T. K. Velu Pillai.]

Before reading the amendment, let me thank you, Sir, for your kindness in permitting me to propose this amendment before the House.

The first amendment runs as follows:—

"Two months after the service of the copy as aforesaid, if the petition is not withdrawn, the court shall enquire into the petition and may grant a dissolution of the marriage on proof of any of the grounds mentioned in the preceding Section: Provided that, if the respondent agrees to an order for dissolution being passed without an enquiry into the reasons for such dissolution, no such enquiry shall be held."

PRESIDENT: Does that to relate sub-clause (1) of Clause 8?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): This may be treated as Clause 8.

PRESIDENT: You want that to be the whole of Clause 8 and nothing else?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): It may be Clause 8 (1).

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): The entire provision relating to divorce may be embodied in that particular Section. This Clause is intended to obviate any enquiry into the grounds for the dissolution of a marriage if the respondent agrees to the order for divorce being passed without such an enquiry.

PRESIDENT: You are adding some words which are not in the printed list, Mr. Paramesvaran Pillai.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): "Two months after the service of the copy, as aforesaid, if the petition is not withdrawn"—these are the words that I want to add to the amendment.

PRESIDENT: You want the existing Clause 8 (1) to be substituted by the following:—

"Two months after the service of the copy, as aforesaid, if the petition is not withdrawn, the court shall enquire into the petition and may grant a dissolution of the marriage on proof of any of the grounds mentioned in the preceding Section: Provided that, if the respondent agrees to an order for dissolution being passed without an enquiry into the reasons for such dissolution, no such enquiry shall be held."

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): I second it.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I rise to oppose the motion. I am one of those who spoke and voted upon what has become Clause 5 of the Bill which was accepted by the Council on Saturday last. For my part, and also on behalf of the gentlemen along with whom I voted, I may assure the Council that it

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is not through any *indifference* that we voted, but our voting was the result of a serious, anxious and affectionate consideration of the interests of the Nayar society and the communities to which the Nayars are related. Our object was to make divorce as difficult as possible and we desired to have a provision which would act as a deterrent. The question of divorce is no doubt an ugly question, and as it is an ugly question it is sure that respectable people will not go to courts, unless such a course is rendered absolutely indispensable. Even at the time the amendment was being discussed, we thought of bringing in consequential amendments so that, if there were any defects in the Section as it stands now, they might be rectified in the further stages of the Bill in the Council. My learned friend, Mr. Paramesvaran Pillai, a leading member of the Nayar community, has taken a great deal of trouble in getting this Bill before this House. And if there was any provision which would not be sufficiently adverted to by the members of the House, it was open to him to give satisfactory explanations and to prevent any indifference. Personally, I would have attached very great importance to what Mr. Paramesvaran Pillai would have said. But if there are dangers which are now present to his mind, which were not then pointed out by my learned friend, the mover of the Bill, our point of view was sufficiently lucid and clean. When it is remembered that the object is to attain makkathayam in course of time, dissolutions of marriage should be rare in order to reach that goal. We therefore deliberately voted in favour of that amendment. I am glad to say that my learned friend, Mr. Narayana Pillai, as would be seen from the agenda, proposes to bring in a number of amendments. We have had the benefit of talking over the matter; for it may not be any breach of confidence to say that some 10 or 12 of us together perused those amendments. I think there is nothing *ipso facto* bad in a divorce law. Divorce should not be common, and all civilised societies make it difficult for the parties to get divorce. The provisions of the Parsi Divorce Act have been requisitioned by Mr. Narayana Pillai and I am adverting to that fact, because the Parsis, as you well know, are one of the most influential, enterprising and intelligent communities in the whole of India. There is no Indian community, Sir, which has got more self-respect than the Parsis.

PRESIDENT: You are not talking on the amendment. (*Laughter.*)

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): In opposing Mr. Paramesvaran Pillai's amendment —

PRESIDENT: You cannot anticipate the discussion on Mr. Narayana Pillai's amendment.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): My object in saying—

PRESIDENT: You can only speak on this amendment.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Yes; on this amendment and on the amendments which have been tabled before the House for discussion. One of the reasons for opposing this

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[Rao Bahadur K. A. Krishna Aiyangar.]

amendment is that they are not so comprehensive as those tabled by Mr. P. K. Narayana Pillai.

PRESIDENT: You may make a statement. But you should not discuss the merits of other amendments now.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I shall not read or comment upon the other amendments. I only say that I am opposing this amendment. I discuss Mr. Paramesvaran Pillai's amendment in a like spirit and take it seriously into consideration because I am sure the other amendments that follow this amendment will certainly be suited to the taste, temperament and respectability of the Nayar community. I think I am justified in opposing Mr. Paramesvaran Pillai's amendment without going into the other amendments because the points are covered more liberally. For that reason I oppose the amendment.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, I am proposing my amendment as a counter-amendment to Mr. Paramesvaran Pillai's amendment.

PRESIDENT: I do not think you can do that.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Am I at liberty to move my amendment independently of Mr. Paramesvaran Pillai's amendment?

PRESIDENT: Mr. Paramesvaran Pillai's amendment is now under discussion and it will first be put to the vote. Then your amendment will follow.

MR. C. SANKARA MENON (*Quilon*): May I know whether an amendment to an amendment can be moved?

PRESIDENT: An amendment to an amendment can be moved with my permission.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): It is therefore that I wanted your permission.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The question is whether we should consider Mr. Paramesvaran Pillai's amendment or Mr. Narayana Pillai's amendment.

PRESIDENT: It does not constitute an amendment to Mr. Paramesvaran Pillai's amendment. There is nothing preventing me to permit an amendment to an amendment. But yours is not an amendment to an amendment.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): All these amendments are proposed to the Clauses settled by the Select Committee. At present, without understanding the relative merits and the different grounds of the amendments, the House may have to adopt a position from which it will not be possible for it to retract at a later stage. Therefore I would suggest that Mr. Narayana Pillai may be allowed to bring in his amendment so that both the amendments may be placed before the House and voted upon.

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PRESIDENT: Do the Standing Orders permit it? Will you kindly draw my attention to the relevant portion of the Standing Orders?

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): There is nothing against.

PRESIDENT: I know there is a provision in which it is stated that a motion could be split up by the President for the purpose of putting it to the vote. But whether two independent amendments or motions could be discussed together, I am not quite sure. There is nothing in the rules expressly prohibiting it.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): The motion is that Clause 8 be made part of the Bill.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): The difficulty is not merely with this Section. It may confront us also in other Sections where several of my friends have tried their hands in drafting amendments which certainly could be regarded as new Sections.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Where the amendment is a pure substitution, I do not think that it is permissible. Where one Section is required to be substituted by another, that amendment may not be in order. But this amendment is not of that sort. It is consequential upon the amendment that was carried the other day. To my mind, the proper course will be to vote upon Mr. Parameswaran Pillai's amendment first, and then, if it is not carried, Mr. Narayana Pillai's amendment may be taken up for consideration.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): What I want is that I may be allowed to move my amendments as amendments to Mr. Parameswaran Pillai's amendment.

PRESIDENT: Yours is not an amendment to Mr. Parameswaran Pillai's amendment.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): With your permission, Sir, I beg to explain. The motion before the House is that Clause 8 form part of the Bill.

PRESIDENT: Yes. What the rule says is that the Bill should be considered Clause by Clause.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): There are two amendments to the Clause, viz. the amendment of Mr. Parameswaran Pillai and that of Mr. Narayana Pillai. The President may allow both the amendments to be moved.

PRESIDENT: Would you quote a precedent?

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Yes. In the Kallar Resolution there was an amendment by Mr. Rangaswami Aiyangar and another by another member. The two amendments were discussed together and they were put to the vote separately. The discussion was also allowed to go on on both the amendments.

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[President.]

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): There was a principal motion and the amendment was not an independent amendment but an amendment to the motion.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): The principal motion is that Clause 8 do form part of the Bill. So these two amendments may be considered together for the present.

PRESIDENT: If that principle is accepted, all the amendments relating to one Clause will have to be discussed together. Whatever the precedent be in respect of the Kallar Resolution, it can hardly be followed.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): That is why the Standing Order says that the President may exercise his discretion. So, here is a matter in which the President may exercise his discretion.

MR. A. HOOGEWERF (*Nominated*): A difficulty presents itself to my mind. When one amendment is opposed, how can the other amendment be moved?

PRESIDENT: I realise the difficulty.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I wish to draw your attention to one point. As the amendments are substantially similar, if one of the amendments is carried, the other amendment *ipso facto* falls to the ground, and we will not be in order in considering it. The proposal of Mr. G. Paramesvaran Pillai is that all these amendments may be taken up together. Unless these amendments are considered together, we may be running a risk, because Mr. K. Paramesvaran Pillai's amendments, for example, would be very useful if the other amendments were not carried. It is only in the view that the other amendments, if disposed of, will be more useful that I oppose the amendment of Mr. Paramesvaran Pillai.

PRESIDENT: I see the practical use of the course which you suggest. But I am afraid it will be against precedent.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Standing Order No. 40 runs as follows:—

> Amendments shall ordinarily be considered in the order of the Clauses to which they respectively relate.

That is all. And what the rule requires is that with respect to each particular Clause the amendments shall be considered in order. Here is Clause 8 which is under the consideration of the House. Therefore all the amendments will have to be considered together.

PRESIDENT: That does not necessarily follow.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I shall now cut the gordian knot by withdrawing my amendment.

The amendment was, by leave, withdrawn.

PRESIDENT: That is all right. You have another amendment also.

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MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I withdraw that too.

The following amendment was not moved:

MR. K PARAMESVARAN PILLAI (*Tiruvalla*): Delete Clauses 7 and 8 and substitute the following:

Notwithstanding anything contained in Section 5, if the petitioner is the husband, he shall offer in the petition reasonable compensation to the respondent except when such respondent has renounced Hinduism and has embraced another religion, and the court shall award such compensation as it thinks reasonable; provided that, in determining the amount of compensation, the court shall not go into the grounds of the proposed dissolution if the respondent agrees to an order of dissolution without an enquiry into its grounds.

(1) So far as may be, the provisions of the Code of Civil Procedure, applicable to suits shall, apply to all proceedings under this Chapter.

(2) Subject to the provisions of the Code of Civil Procedure and the Limitation Regulation applicable to appeals from original decrees, an appeal shall lie to the High Court from the decision of the District Munsiff under the Preceding Section.

(3) In so far as it awards payment of compensation, an order of the District Munsiff or an order passed on appeal shall, subject to the provisions of the Limitation Regulation relating to the execution of decrees, be executable as a decree.

(4) When an appeal is preferred against the decision of the District Munsiff, court fees shall be levied in accordance with the provisions of the Court Fees Regulation.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, the amendments that I am proposing now have been necessitated by the carrying of the motion made by Mr. A. Govinda Menon on the previous day of the Council meeting. If you will excuse me, I would say that he has been playing the part of a knight errant without the necessary horse and the spear. (*Laughter.*) So much so, the main proposition has been carried and the necessary consequential amendments that would follow upon the thing have not been provided for by him. I do not go into the question of the wisdom or unwisdom of the amendment carried at the instance of Mr. Govinda Menon and I bow to the decision of this House in accepting it. But accepting it means that there is a necessity for a number of consequential provisions if the law as laid down in that amendment is to be carried out successfully. Hence these amendments.

Sir, there are certain verbal inaccuracies in the amendments I have proposed and I may be permitted to rectify them.

Delete Clause 8 and substitute the following:—

"*Where the petitioner alleges adultery as the ground for dissolution and where the respondent opposes the prayer for dissolution, the petition shall be dismissed unless the person with whom adultery is alleged to have been committed is impleaded as co-respondent in the petition, provided such person is alive and his whereabouts can be ascertained on a diligent enquiry.*

If the petition is not dismissed, copy of the petition shall be served, in the manner aforesaid, also on the co-respondent, if any."

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): May I know from Mr. Narayana Pillai whether it is usual, when the wife files the application, to implead the co-respondent?

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[Mr. P. K. Narayana Pillai]

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Yes.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): When the husband files an application, it is usual to implead the co-respondent, the guilty companion of the wife. But suppose the wife files it on the ground of the husband's adultery it is not usual to implead the co-respondent.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I am coming to that.

"Notwithstanding anything contained in the previous paragraphs, the court may, if it is not satisfied as to the good faith of the allegation contained in the petition mentioned therein or that the petitioner has not been in any way accessory to or has not connived at or condoned the offences set forth in the petition or that there has been no unnecessary or improper delay in presenting the petition, dismiss the same.

Three months after the service of the copy aforesaid, if the petition is not withdrawn in the meantime and,

(2) *(a) if the petition is not opposed with respect to any of the grounds mentioned in Section 5, or if the respondent, while denying the allegation contained in the petition, agrees to the dissolution, the court shall, without going into the grounds alleged, declare in writing the marriage dissolved;*

(b) if the respondent does not agree to the proposed dissolution and denies the allegation in the petition, the court shall enquire into the allegation in the petition and after considering the evidence adduced by the parties, shall order the dissolution of the marriage, if the grounds set forth in the petition are made out, and shall dismiss the same in case they are not made out.

(3) *At the time of passing the order referred to in sub-clause (2)—*

(a) if the petitioner is the husband and his prayer has been granted, the court shall, except where the respondent lives in adultery or has changed her religion, award to the wife such compensation not exceeding Rs. 5,000, or such monthly allowance till her re-marriage as would be proper under the circumstances;

(b) if the petitioner is the wife and her petition is granted, the court shall also decree in her favour such compensation not exceeding Rs. 5,000 or such monthly allowance till her remarriage, as would be proper under the circumstances, having regard to the position, means and circumstances of the parties.

Explanation:—Habitual cruelty may include wilful desertion for a period of two years or more and shall also include persistent neglect on the part of the husband to maintain the wife.

(4) *Subject to the provisions of the Code of Civil Procedure and the Limitation Regulation applicable to appeals from original decrees, an appeal shall lie to the High Court at the instance of any aggrieved party from any decision of the District Munsiff relating to dissolution,*

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or award, or both, except when it relates exclusively to the costs; and when an appeal is preferred, court fee shall be levied on the value of the subject-matter in appeal under the Court Fees Regulation.

(5) In so far as it awards payment of compensation or costs, an order of the District Munsiff or an order passed on appeal shall, subject to the provisions of the Limitation Regulation relating to the execution of decrees, be executed as a decree.

(6) Save in so far as they may be inconsistent with anything contained in this Section, the provisions of the Code of Civil Procedure relating to the trial of a suit shall apply to all proceedings under this Section :

Provided that all proceedings under this Section either before a court or before a commissioner appointed by a court shall be held in camera and that publication of any account, excepting the final order and decree, of such proceedings, shall be punishable with simple imprisonment for a term of six months or with fine which may extend to Rs. 1,000, or both.

Provided also that the parties may give evidence against each other by means of affidavits and may be compelled to appear to give oral evidence only for cross-examination and re-examination on the affidavits.

(7) The costs decreed in favour of the petitioner may be made payable by the co-respondent to the proceedings, if any.

(8) The Government shall, in accordance with rules to be framed, appoint persons within the jurisdiction of each District Munsiff to be delegates to aid in an enquiry under this Chapter. The persons so appointed shall be Nayars, males or females, and their names shall be published in the Government Gazette. The delegates to aid in an enquiry shall be selected by the court in rotation from the delegates appointed for each court.

(9) During an enquiry for dissolution of a marriage under this Chapter, the court may, from time to time, pass such interim orders and make such provisions in the final order as it may deem just and proper with respect to the custody, maintenance, education and marriage of the minor children, the marriage of whose parents is the subject of such enquiry.

This is the amendment that I propose to place before the House as absolutely necessary on the amendment passed at the instance of Mr. Govinda Menon. Mr. Govinda Menon's amendment to Clause 5 having been accepted, it seems unwise to shut out a regular enquiry under the various conditions specified in Clause 5. One of the grounds mentioned in Clause 5 is adultery. Referring to the subject of divorce on account of adultery, I find that the English practice and Indian Statutes upon the subject require the impleading of a co-respondent before the trial can be proceeded with. I submit that, whatever may be the indecency or delicacy that may follow that provision, it is quite in keeping with natural justice that a person

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[Mr. P. K. Narayana Pillai.]

whose character is allowed to be blown up should be a party to a proceeding, before a court can pronounce upon the guilt or innocence of a particular person. So, I would consider the presence of the co-respondent as absolutely necessary. Further, I would also say that it is generally found on a reference to the provisions on the subject of divorce as codified in the Indian Statutes—I mean the Indian Divorce Act and the Parsi Marriage and Divorce Act—there is a chance for a husband and wife to escape the rigours of the marriage tie so colluding as to throw dust in the eyes of a court and pass through the divorce court to obtain a decree for the dissolution of a marriage. Now, that can take the shape of proceedings started on the ground of adultery committed with a third party. With respect to that, therefore, and also to prevent the abuse of the process of a court, it is necessary that the party whose reputation is besmirched must be made invariably a party to the proceedings. So, viewing the matter also as a means to avoid collusion between the two parties who may be so much vexed with the company of each other as to seek divorce, a provision for the presence of the co-respondent will enable the facts to be brought out in their true light. And then, the provision in the Indian Divorce Act and the Parsi Divorce Act is also clear. My friend Mr. Krishna Aiyangar enquired, when the petitioner is the wife, whether it was usual to implead the woman with whom adultery had been committed. I recollect to have come across such a provision in the Parsi Marriage and Divorce Act.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): In the Indian Divorce Act?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): In the Indian Divorce Act, there is no such provision.

Therefore, there is nothing unusual in such a step. On the other hand, if the House objects to another woman also being dragged in as a co-respondent I am prepared to agree.

PRESIDENT: Should not the reputation of that woman also be gone into?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): My opinion is that a female co-respondent is also a necessary party.

Then the further questions relate to the most inoffensive possible divorce that may be procured under the Regulation. My friend Mr. K. Paramesvaran Pillai evidently thought about the question, and I am one with him in thinking that, if it is possible, the offensive enquiry of the divorce court and the attractive reports of such affairs as in English newspapers may be avoided in Travancore. I suggest that, when the respondent denies the ground on which dissolution is sought for, but yet agrees that the dissolution may be granted, it may be granted without ther enquir y.

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RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Will it not be better if we take up the amendments one by one?

MR. P. K. NARYANA PILLAI (*Ambalapuzha*): Let me explain first.

That would seem a novel procedure viewed from the general standpoint of the divorce law. But even Mr. Govinda Menon must feel himself estopped, in view of Clause 4, already passed, which says that, by mutual consent of parties evidenced by a registered instrument, a divorce may be granted. There is absolutely nothing objectionable in the party appearing before the court and agreeing to the proposed dissolution. That is, therefore, specifically provided for, to avoid an enquiry into the grounds alleged by the party. Then we come to the necessity of providing for the stormy proceedings of vehement divorce actions. When that stage is reached, the necessity for the appearance of the co-respondent is evident. Hence I say that he must be invited to be present by a regular summons and his presence ought certainly to be ensured by definite provisions. If the parties are prepared to compromise, the Civil Procedure Code may be made applicable to all proceedings under this chapter. If the parties are not prepared to compromise, then the elaborate enquiry, as contemplated under the chapter, will have to be gone into.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): What will be the remedy of the co-respondent?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): He will be no party. The co-respondent will not appear on the scene till the pitched battle commences. Therefore I say that the matter will have to be threshed out just as if it were a regular trial.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Karthikapalli*): May I know whether Mr. Narayana Pillai wants the words "in the petition" in line 3 to stand?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): If you consider the phrase unnecessary, I am prepared to omit it. We will take up the amendments *seriatim*.

Even in such advanced communities as the Parsis and the Christians, among whom divorce is permissible, people seem to take pretty good care that the proceedings need not be unnecessarily let known to the public. Hence it is that those Acts invariably provide that the enquiry or the trial may be carried on in closed chambers. Hence I have adopted that provision in the interests of a community which has, for the first time, to be put to the strange experiences of the divorce court. Thirdly, I find that even the Parsis, for whose sake the Government of India have been at pains to create special matrimonial courts—even such a community appears to have demanded

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[Mr. P. K. Narayana Pillai.]

certain hedgings when the reputation of the members of their community is exposed to serious consequences. Hence the Parsi Marriage and Divorce Act directs that delegates should be appointed by the local Government, and the courts are invariably being assisted by such delegates to aid in the investigation of the questions raised in the divorce court. I have accordingly borrowed that provision also; and I have gone further in requesting the Government of Travancore to frame the necessary rules for employing the delegates and how they will have to behave in the matrimonial court—a provision not found in the Parsi Marriage and Divorce Act.

Another matter that has to be taken into consideration in this connection is the tender destinies of minor children who unfortunately may have nothing to do with the bickerings of the husband and the wife, but whose interests are probably paramount to the interests of the husband and the wife in matrimonial proceedings. When the warfare is pretty keen between the husband and the wife there is a chance of the interests of the minors being lost sight of. The provisions in the Nayar Regulation Amendment Bill are somewhat defective. Hence, during the period of the pendency of the proceedings in a court, if the court enquires into the question and, finally, when it passes its decree, the court should have power to make such arrangements for the education, maintenance, custody and welfare of the children who are innocent parties. That also is a provision in the Parsi Act, which I have borrowed practically with the additio.n of the word "marriage". The "marriage" provision does not exist there. When the husband and the wife are fighting, with the sanction of the court, the minors may be allowed to marry. Then the only other serious question is the question of compensation. Sir, my friend Mr. Parameswaran Pillai seems to be of opinion that, even in a case of adultery, the wife should not go without anything. Somebody quoted the Hindu Law also in support of that.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated Deputy President*): Only maintenance ?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Yes, only maintenance. The Hindu Law says, with all sympathy, which is after all not of the stoutest veriety, that she may have a bare allowance—

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): Starvation allowance.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Quite so, starvation allowance.

When there is an enquiry to see whether a wife has been living in adultery and when it is found as a matter of fact that the case

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is against her—that she has been living in adultery—it would be rather strange for enlightened people to contend that she would still be entitled to something at the hands of an innocent husband. The existing Nayar Regulation in that particular respect is to the effect that a wife who lives in adultery is not entitled to any maintenance at the hands of the husband; and there is another statute, *i.e.*, Section 366 of the Criminal Procedure Code, which also disallows any maintenance to a wife who lives in adultery. I have borrowed the provision from the two statutes which say that, when a wife lives in adultery, she shall not be entitled to anything. The only other circumstance under which a wife shall forefeit her claim for maintenance is when she changes her religion. Certainly it is very difficult for the respondent under such circumstances to agree with the peculiar conduct of the wife and cohabit with her. Except in these two instances, therefore, I say, even if the husband succeeds, that is, on the question of incompatibility of temperament or on the question of insanity or incurable disease or in any other circumstances, owing to no fault of the poor woman, she should not be thrown away without anything. Unless it is possible that she gets remarried under these circumstances, she may be asked to shift for herself. But where the wife succeeds, the amendment carried by Mr. A. Govinda Menon will be a blessing in disguise in one respect. That is to say, under the existing law, no wife, when she happens to be a petitioner, is entitled to get anything from the husband. But I say, if the wife succeeds as against a husband, on any of the grounds mentioned in Mr. A. Govinda Menon's amendment, *i. e.*, adultery, incompatibility of temperament, or desertion, etc., when, of course, the husband is the party who is found guilty of such gross conduct as against a woman, I say that she shall be entitled to such amount as will be necessary for her support and as may be found proper and justifiable by a court of law. So, to that extent, Mr. A. Govinda Menon's amendments have benefited the womenfolk. These are the main features of the amendment that I beg to place before the House, and in consideration of the fact that all these provisions, except the one that I submitted with respect to the possibility of the decree being passed at the very first blush of the proceedings by the respondent agreeing to the divorce, are borrowed either from the Indian or English Statutes or decided cases, I am submitting that these proposals may be accepted by the House and the amendments to the Bill got through.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I second it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I think it will be better to take the sub-clauses one by one.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): All right; by all means. I court criticism by a separate consideration of the various sub-clauses.

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[Mr. V. Subba Aiyar.]

PRESIDENT: You want them to be treated as separate amendments.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): It is impossible to accept the whole thing as one proposition. There are several provisions to which I may agree. There are some provisions to which I may agee only with slight modifications.

PRESIDENT: You may discuss Clause by Clause.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I have placed all the Clauses. If I should submit Clause by Clause I am prepared to do so. If you, Sir, request the members to consider the clauses *seriatim*, they are at liberty to do so. I am amenable to that course.

MR. JOSEPH PANJIKARAN (*Shertallai*): Is it open to any member to propose any amendment to any Clause that is being discussed and voted upon?

PRESIDENT: You may suggest if the mover of the amendment accepts it; and if the House permits it is all right.

The House adjourned for lunch at 2-5 P. M. and re-assembled at 3-2 P. M.

PRESIDENT: The discussion will now proceed Clause by Clause. The first Clause runs like this:

"Where the petitioner alleges adultery as the ground for dissolution and where the respondent opposes the prayer for dissolution, the petition shall be dismissed unless the person with whom adultery is alleged to have been committed is impleaded as co-respondent in the petition, provided such person is alive and his whereabouts can be ascertained on a diligent enquiry.

If the petition is not dismissed, copy of the petition shall be served, in the manner aforesaid, also on the co-respondent, if any.

Notwithstanding anything contained in the previous paragraphs, the court may, if it is not satisfied as to the good faith of the allegation contained in the petition mentioned therein or that the petitioner has not been in any way accessory to or has not connived at or condoned the offences set forth in the petition or that there has been no unnecessary or improper delay in presenting the petition, dismiss the same."

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, I beg to move that the words "and where the respondent opposes the prayer for dissolution" be deleted.

PRESIDENT: Do you object to that?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I object to that for this reason. In the first place, in sub-clause (2) it is specially provided: "or if the respondent, while denying the allegations contained in the petition agrees to the dissolution, the court shall declare in writing the marriage dissolved." Therefore, there is no necessity to put it in here. Further, Mr. Narayana Pillai referred to the cases where the petitioner and the respondent may collude and the necessity may arise for the impleading of the co-respondent. If so—if before

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the issue of a notice the respondent should agree that there should be a dissolution of marriage—the collusion that he wanted to avoid has not been avoided. Therefore, it is not necessary to put it in at that stage. Further, whether the petitioner alleges adultery as the ground for dissolution or not, it must be after the service of notice and not before, because the subsequent portion says :

"The petition shall be dismissed unless the person with whom adultery is alleged to have been committed is impleaded as a co-respondent in the petition, provided such person is alive and his whereabouts can be ascertained on a diligent enquiry.

If the petition is not dismissed, copy of the petition shall be served in the manner aforesaid, also on the co-respondent, if any."

The subsequent provision provides for the serving of a notice upon the respondent and also upon the co-respondent. Therefore, I think that the words 'where the respondent opposes the prayer for dissolution" in lines 1 and 2, that is to say, after the words "for dissolution" need not be put in at this stage. It is enough if, after notice, the respondent appears and says that there is no objection to the dissolution of marriage, and the grounds need not be gone into. Till then, as it is, it will mean that there will be allegations in the petition against a co-respondent, and then, if the respondent admits the dissolution, the charges against the co-respondent will be still there. Therefore I do not see the necessity for putting it in at this stage.

MR. S. PARAMESVARA AIYAR (*Secretary to Government*): I second the amendment proposed.

MR. S. KRISHNA AIYAR: (*Mavelikara cum Kartikapalli*): The central idea underlying Mr. Narayana Pillai's amendment seems to be that, when the respondent confesses the guilt, there is no necessity for impleading the co-respondent or issuing notice to the co-respondent. In other words, a further opportunity is allowed to the parties to make up their minds as to whether the petition is to be pushed through or not. It is only when the facts of adultery have to be enquired into at a later stage that the co-respondent's name need be mentioned. Though I find Mr. Narayana Pillai using the words "in the petition" also, which I find, cannot stand, because the co-respondent is to be notified only after entry of defence, the name of the co-respondent cannot possibly be put in in the petition itself. Therefore, I am submitting that the central idea of the amendment may be accepted, namely, that the co-respondent need be notified only in case the petition is opposed. The words "in the petition" may be deleted in the first Clause itself. Another Clause or qualification also will have to be introduced. There may be cases where the co-respondent's name is unknown. Mr. Narayana Pillai provides only for the co-respondent being alive and his whereabouts being not ascertainable on a diligent enquiry. The identity of the party itself may be unknown. That contingency has not been provided for by Mr. P. K. Narayana Pillai. I, therefore, propose that the words "in the petition" be deleted and the words "is known" also be added before the words "and his whereabouts." That will make the idea of Mr. Narayana Pillai more plain.

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[Rao Bahadur K. A. Krishna Aiyangar.]

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*) : I agree with Mr. Krishna Aiyar in thinking that the term "in the petition" is meaningless as it is, and should therefore be deleted. In regard to the objection of my friend Mr. Subba Aiyar, namely, that the Clause "where the respondent opposes the prayer for dissolution" may be omitted, I may point out that, in that case, the Clause, as it stands, goes the extent of stating that, as soon as the petition is put in, the co-respondent has also to be impleaded. It is just with a view to avoid that contingency, namely, to ensure that it is only in case the petition is objected to that the co-respondent need be brought into the court, that the Clause has been added. It will practically defeat the very object of that amendment and therefore I am of opinion that that Clause should not be disturbed.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : Sir, my original idea at the time of sending in the amendment has been modified by the insertion.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*) : Sir, some of us would also like to speak on that amendment before Mr. Narayana Pillai is allowed to speak.

PRESIDENT : Do you want Mr. Narayana Pillai to wait ?

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*) : Yes.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : If I am going to accept the suggestion of my friend Mr. Krishna Aiyar, I think it is not necessary to discuss it any further.

PRESIDENT : You cannot say that.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*) : If Mr. Narayana Pillai is going to adopt that amendment, I am not very particular.

PRESIDENT : I do not quite follow you.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*) : In view of the fact that Mr. Narayana Pillai is going to accept Mr. Krishna Aiyar's amendment, I have got nothing to say.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : I am prepared to accept the suggestion of my friend Mr. Krishna Aiyar, that the expression "in the petition" may be dropped and the additional words added, namely, "is known" between the words "is alive" and "and his whereabouts."

PRESIDENT : You will have to put in a comma after the word "alive."

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*) : I come back, Sir, to the point I raised a little while ago that the Section, as it stands, should not be made applicable in cases

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where the petitioner is the wife. After all, the blasting of the reputation of a man may not be quite so serious as the blasting of the reputation of an innocent woman who is impleaded as co-respondent. The position put forward by my friend was that it was intended to give an opportunity to an accused party to vindicate his character in a court of law. Well, any *exparte* judgment obtained behind the back of an individual is not going to damn him seriously in life. A co-respondent is, if a woman, not generally impleaded. The man who is the companion of the guilty woman is oftentimes impleaded as a co-respondent just for the purpose of enabling the petitioner to realise his costs and for the purpose of recovering any damages that the court may award. It is not to give an opportunity to the co-respondent to vindicate his character that he is included. The Indian Divorce Act insists on the co-respondent being brought in *only* if the petitioner is the husband. I would therefore make an addition : "provided that, in cases where the petitioner is the wife, the co-respondent need not be impleaded."

PRESIDENT: Will you add it at the end of the Clause ?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Yes Sir. That is at the end of Clause 1 (*a*), first paragraph.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): I beg to second the proposal.

PRESIDENT: Do you bring it forward as an amendment to the amendment brought forward by Mr. Narayana Pillai ?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Yes, and I am entitled to submit it for the consideration of the House.

PRESIDENT: You are moving it as a definite amendment, and it is seconded. I think in a case like this it will have to be permitted.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): With respect to the amendment of my friend Mr. Krishna Aiyangar, in justification of what I have myself done, I would draw his attention to Section 37 of Parsi Marriage and Divorce Act. The Section is as follows :—

"Any husband may sue that his marriage may be dissolved and divorce granted, on the ground that his wife has since the celebration thereof been guilty of adultery ;

and any wife may sue that her marriage may be dissolved and a divorce granted on the ground that since the celebration thereof her husband has been guilty of adultery with a married or fornication with an unmarried woman not being a prostitute, or of bigamy coupled with adultery, or of adultery coupled with cruelty, or of adultery coupled with wilful desertion for two years or upwards, or of rape, or of an unnatural offence.

In every such suit for divorce on the ground of adultery, the plaintiff shall, unless the court shall otherwise order, make the person with whom the adultery is alleged to have been committed a co-defendant, and in any such suit by the husband the Court may order the adulterer to pay the whole or any part of the costs of the proceedings."

Such being the provision of the Parsi Marriage and Divorce Act, I thought any partial distinction in favour of the fair sex may not be acceptable to the House. But, as I observed on a previous occasion

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[Mr. V. Subba Aiyar.]

while introducing the amendment, if the House is for excluding a woman co-respondent from the proceedings, I have mysef absolutely no objection to accept that position. So, if no other member is for retaining the Section, as it is, I am prepared to accept it.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Of course my friend will be bound if the House is prepared to accept. His special inclination in the direction of the amendment must be disclosed to this House.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I am prepared to accept the amendment.

The amendment was accepted.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): May I know what exactly the amendment is?

PRESIDENT: "Provided however that in cases where the petitioner is the wife the co-respondent need not be impleaded." These words are to be added at the end of Clause (1) first paragraph.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): What about my amendment? Mr. Krishna Aiyar's amendment has been accepted.

PRESIDENT: I thought it was only a suggestion and that it was not seconded.

MR. S. PARAMESVARA AIYAR (*Secretary to Government*): I seconded it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): With your permission, may I say a word in explanation of the amendment in answer —

PRESIDENT: I thought you were only making a suggestion. If it is a regular amendment, Mr. Narayana Pillai will have to accept it, and then it will have to be put to the vote of the Council.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I oppose Mr. Subba Aiyar's amendment.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Has it been seconded?

PRESIDENT: Yes, by Mr. Paramesvara Aiyar.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): One word I want to say in explanation. No doubt, my amendment was based on the ground that the petitioner is bound to state in the petition who the co-respondent was and the allegations against the co-respondent; and the question concerned was only with reference to the notice to the co-respondent. I said that, if the petitioner and the respondent agree and settle the matter between themselves, it would not be doing justice to the co-respondent. To avoid that, Mr. Krishna Aiyar suggested that the words "in the petition" may be omitted and therefore

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no notice need go, and the notice need go only in disputed cases where the respondent is not willing to agree to the dissolution of marriage. My difficulty there again is, as soon as the petition is filed without naming the respondent, without naming the allegations in connection with the co-respondent, how long should a court wait? Is it as soon as the petition is filed? How long should the court wait to issue notice? In the Section as it stands, if the words as they are put in by Mr. Narayana Pillai are there, "where the respondent opposes the prayer for dissolution," no time is fixed as to how long the court should wait to issue notice and for the petition to be returned to the petitioner to put his necessary allegation against the co-respondent and to implead him. All that will have to be provided for in such a contingency. That is my difficulty.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Is it not enough to wait till the written statement is put in?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): That is why I say that "where the respondent opposes the prayer for dissolution" need not be there. That is the ground for my amendment. Otherwise it will lead to difficulty. As to when the notice should be issued no time limit is fixed.

PRESIDENT: I put the amendment of Mr. Subba Aiyar to the vote. His amendment is: Delete from Clause 1 (*a*) the words "and where the respondent opposes the prayer for dissolution." There again we want the restoration of the word "it."

The amendment was put to the vote and declared lost, 9 voting *for* and 12 *against*.

PRESIDENT: I take it that the main amendment of Mr. P. K. Narayana Pillai, *i. e.*, sub-clause (1) of Clause 8 is accepted by the House.

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): May I know how the Section would read with all the amendments?

PRESIDENT: Clause (1) (*a*) will read like this:—

"Where the petitioner alleges adultery as the ground for dissolution and where the respondent opposes the prayer for dissolution the petition shall be dismissed unless the person with whom adultery is alleged to have been committed is impleaded as co-respondent, provided such person is alive, is known and his whereabouts could be ascertained on a diligent enquiry."

There are no amendments to sub-Clauses (*b*) and (*c*).

MR. R. KRISHNA PILLAI (*Chief Secretary to Government*): There is another proviso.

PRESIDENT: Yes.

"Provided, however, that in cases where the petitioner is the wife, the co-respondent need not be impleaded."

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): I think the word 'and' must be inserted before the second proviso.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): 'Provided also' will do, I think.

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[President.]

PRESIDENT: Yes. There are no changes in sub-clauses (*b*) and (*c*). We now proceed to Clause 8, sub-clause (2).

MR. S. PARAMESVARA AIYAR (*Secretary to Government*): 'Is alive and known' would read better.

PRESIDENT: Yes, 'and known' would be better.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): A person must first be *known* before the question of his *living* arises. Therefore 'is known and alive' would be better.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I have no objection in putting it like that.

The main amendment which, as further amended, ran as follows was carried:—

8 (1) (*a*) Where the petitioner alleges adultery as the ground for dissolution and where the respondent opposes the prayer for dissolution, the petition shall be dismissed unless the person with whom adultery is alleged to have been committed is impleaded as co-respondent, provided such person is known and alive and his whereabouts can be ascertained on a diligent enquiry; provided also that, in cases where the petitioner is the wife, the co-respondent need not be impleaded.

(*b*) If the petition is not dismissed, copy of the petition shall be served in the manner aforesaid, also on the co-respondent, if any.

(*c*) Notwithstanding anything contained in the previous paragraphs, the Court may, if it is not satisfied as to the good faith of the allegation contained in the petition mentioned therein or that the petitioner has not been in any way accessory to or has not connived at or condoned the offence set forth in the petition or that there has been no unnecessary or improper delay in presenting the petition, dismiss the same.

PRESIDENT: We may now proceed to sub-clause (2). I will read sub-clause (2) for the information of the House.

"Three months after the service of the copy as aforesaid, if the petition is not withdrawn in the meantime, and

(*a*) if the petition is not opposed with respect to any of the grounds mentioned in Section 5, or if the respondent, while denying the allegations contained in the petition, agrees to the dissolution, the court shall, without going into the grounds alleged, declare in writing the marriage dissolved.

(*b*) if the respondent does not agree to the proposed dissolution and denies the allegation in the petition, the court shall enquire into the allegation in the petition, and after considering the evidence adduced by the parties, shall order the dissolution of the marriage if the grounds set forth in the petition are made out, and shall dismiss the same in case they are not made out."

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): With reference to paragraph 2 of amended Section 7 "*a voice: louder, please*" the second and third paragraphs have not been put to the vote of the House.

PRESIDENT: The whole of Clause (1) has been put to the vote and accepted by the House.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I thought that the first paragraph alone was put to the vote of the House.

PRESIDENT: No; the whole clause was put to the vote of the House and the House has accepted it. We had, as I said, no amendment with regard to the second and third paragraphs. The discussion

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related to the whole Clause, and I thought the House had already accepted the whole Clause.

MR. S. PARAMESVARA AIYAR (*Secretary to Government*): That was only with reference to the first paragraph.

MR. R. KRISHNA PILLAI (*Chief Secretary to Government*): That was how it was understood.

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): The first paragraph alone was put to the vote of the House.

PRESIDENT: Clause (1) covering (*a*), (*b*) and (*c*) was put to the vote of the House and all the three paragraphs were accepted by the House; but the discussion was confined to (1) (*a*) as no amendments were proposed in respect of (*b*) and (*c*).

MR. S. KRISHNA AIYAR (*Mavelikara cum Karthikapalli*): Mr. P. K. Narayana Pillai's amendment consists of three paragraphs. I understood that the first paragraph alone was put to the vote of the House.

PRESIDENT: Now, we go to sub-clause (2) and we deal with both paragraphs (*a*) and (*b*) of sub-clause (2).

MR. A. HOOGEWERF (*Nominated*): I beg to propose an amendment to (2) (*a*), *viz.*, that the words 'or change of religion' be deleted.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): We have not come to that.

PRESIDENT: It has been renumbered as sub-clause (3). We have not come to that.

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): We thought that only the first paragraph of sub-clause (1) was put to the vote of the House. We never knew that the whole Clause was voted upon. We have some objections to the second and third paragraphs.

PRESIDENT: A Section need not be read until we exhaust the discussion of all the Clauses. I read the whole of it because I put the whole Clause to the vote of the House.

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): When I wanted the Clause as amended to be read, only the first paragraph was read by the President. The other paragraphs were not read.

PRESIDENT: No change was suggested in the second and the third paragraphs, and I asked the House whether the House accepted the whole Clause.

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): It was not understood like that.

PRESIDENT: Have you any suggestion to make?

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): Yes. In the third paragraph it is said that 'the petitioner has not been in any way accessory to or has not connived at or not condoned the offences set forth—' That again is to be gone into by the court. I do not think that is desirable.

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[Mr. G. Paramesvaran Pillai.]

PRESIDENT: The idea is that the court goes into the whole question.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*)(*Deputy President*): There is one difficulty, Sir, that I wish to bring to the notice of the House, with reference to sub-clause (2) (*a*). It runs as follows:--

(*a*) "If the petition is not opposed with respect to any of the grounds mentioned in section 5, or if the respondent, while denying the allegations contained in the petition agrees to the dissolution, the court shall declare in writing the marriage dissolved."

What about the co-respondent? The Section empowers the court to declare the marriage dissolved under two circumstances. One is when the petition is not opposed at all either by the respondent or by the co-respondent at the time of the hearing. The second contingency is 'or if the respondent, while denying the allegations contained in the petition agrees to the dissolution, the court shall declare in writing the marriage dissolved.' What is the position of the co-respondent is the question that I want my friend to consider. I merely ask him for the sake of information, before I formally move an amendment.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): May I bring to the notice of Mr. Krishna Aiyangar that there is no co-respondent at this stage. The co-respondent comes in only when the petition is opposed. The case contemplated is a case when he denies that and agrees to the dissolution. It is only when the dissolution is opposed that the co-respondent will come in.

PRESIDENT: There is no question of dissolution but only the petition for dissolution.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Not dissolution, but the prayer for dissolution.

PRESIDENT: Mr. Narayana Pillai, do you want to reply?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): There is no opposition and so I need not reply.

PRESIDENT: I do not know whether there is to be any opposition. Is there any member who wishes to speak?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): There are only two sub-clauses now before the House—Clause 8 (2), (*a*) and (*b*)

MR. S. PARAMESVARA AIYAR (*Secretary to Government*): Up to the end of the definition of 'habitual cruelty.'

PRESIDENT: No, no. Shall I read it once more?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Till the words 'in case they are not made out.'

PRESIDENT: Yes.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): In Clause (2) (*b*), the word 'allegation' has to be changed into 'allegations', because the next sentence deals with 'grounds.'

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MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : I accept the amendment.

PRESIDENT : Then I take it that, with the only change of the word 'allegation' in paragraph (*b*) into 'allegations,' the whole of Clause 8 (2), paragraphs (*a*) and (*b*), is accepted by the House.

MR. K. GEORGE (*Financial Secretary to Government*): The word 'allegation' occurs in two places.

MR. T. LAKSHMANA PILLAI (*Nominated*): For one allegation there may be several grounds.

PRESIDENT : The plural includes the singular also.

MR. S. PARAMESVARA AIYAR (*Secretary to Government*) : It will be 'allegations' in both the places.

Sub-clause (2), which, as amended, runs as follows, was carried :—

2. "Three months after the service of the copy as aforesaid, if the petition is not withdrawn in the meantime, and

(*a*) if the petition is not opposed with respect to any of the grounds mentioned in Section 5, or if the respondent, while denying the allegations contained in the petition, agrees to the dissolution, the court shall, without going into the grounds alleged, declare in writing the marriage dissolved ;

(*b*) if the respondent does not agree to the proposed dissolution and denies the allegations in the petition, the court shall enquire into the allegations in the petition and, after considering the evidence adduced by the parties, shall order the dissolution of the marriage if the grounds set forth in the petition are made out, and shall dismiss the same in case they are not made out."

PRESIDENT : We now proceed to sub-clause (3) which reads as follows :—

"(3) At the time of passing the order referred to in sub-clause (2),

(*a*) if the petitioner is the husband and his prayer has been granted, the court shall, except where the respondent lives in adultery or has changed her religion, award to the wife such compensation not exceeding Rs. 5,000 or such monthly allowance till her remarriage as would be proper under the circumstances :

(*b*) if the petitioner is the wife and her petition is granted, the court shall also decree in her favour such compensation not exceeding Rs. 5,000 or such monthly allowance till her remarriage as would be proper under the circumstances, having regard to the position, means and circumstances of the parties.

EXPLANATION. Habitual cruelty shall include wilful desertion for a period of two years or more and shall also include the persistent neglect on the part of the husband to maintain the wife."

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*) : That explanation was omitted by Mr. Narayana Pillai.

MR. S. PARAMESVARA AIYAR (*Secretary to Government*): No, no. The first part relating to adultery alone was omitted.

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[President.]

MR. T. LAKSHMANA PILLAI (*Nominated*): Sir, in the explanatory clause relating to habitual cruelty, the expression 'persistent neglect' has not been defined, *i. e.*, it is not hedged in by a time-limit as in the case of desertion. To leave it in this indefinite condition is to open the door for frivolous or malicious complaints and to make the law otherwise oppressive. Hence I beg to propose that a definite period of time, say, six months or one year, should be fixed, neglect within which period may be regarded as 'persistent'.

PRESIDENT: 'Neglect exceeding that period' and not 'within that period.'

MR. T. LAKSHMANA PILLAI (*Nominated*): Yes, Sir. Otherwise neglect even for two consecutive months may bring an unwary husband within the clutches of the law. I would, therefore, add the words 'for a period of six consecutive months' after the word 'neglect'.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I second it.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): Sir, I move—

PRESIDENT: This amendment must first be discussed and voted upon.

MR. A. HOOGEWERF (*Nominated*): Before we go to the explanation in sub-clause (3) I want to move an amendment.

PRESIDENT: That can come afterwards.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, I oppose the amendment proposed by my friend Mr. Lakshmana Pillai. The case that is contemplated is persistent neglect. That may be exhibited by a husband within the course of 15 days or 6 months or any time and must be a question of fact for the court to determine. It is very difficult to fix the time-limit during which this persistent conduct must be proved. So I would leave it entirely to the discretion of the court with respect to the nature of the persistent neglect that is contemplated under the Section.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I should like to make an amendment.

PRESIDENT: A little louder, please.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I should like to make an amendment.

PRESIDENT: This must be disposed of first.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): May I ask Mr. P. K. Narayana Pillai a question and get his explanation before speaking on that question?

PRESIDENT: He was in possession of the House. You did not ask any question then.

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RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*) : We should have an opportunity of questioning him with respect to certain clauses in the Section. Mr. Narayana Pillai formally moves Clause by Clause. We should have an opportunity of questioning him and eliciting information with respect to the whole Clause in general.

PRESIDENT: If you mention any doubt, he will reply. Mr. Narayana Pillai has already spoken in regard to this amendment.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*) : With respect to sub-clause (*a*)—

PRESIDENT: There is a definite amendment before the House proposed by Mr. Lakshmana Pillai and seconded by you. (*Laughter.*)

I should ask Mr. Lakshmana Pillai to read his amendment before I put it to the vote of the House.

MR. T. LAKSHMANA PILLAI (*Nominated*): Add the words 'for a period of six consecutive months' at the end of the clause, in order to make the word 'persistent' more definite.

PRESIDENT: 'For a period of six consecutive months' to be added after the word 'neglect' in the explanation—that is your amendment, Mr. Lakshmana Pillai?

MR. T. LAKSHMANA PILLAI (*Nominated*): Yes.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I would like to know from Mr. Lakshmana Pillai as to what he understands by the word 'neglect' in his amendment.

MR. T. LAKSHMANA PILLAI (*Nominated*): I would not mind if the word 'neglect' is changed into 'omission.'

PRESIDENT: I will now put Mr. Lakshmana Pillai's amendment to the vote of the House.

The amendment was put to the vote of the House and lost.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I move that firstly, in clause (*a*), instead of the word 'shall' the word 'may' be put in, and secondly that the words 'not exceeding Rs. 5,000' be deleted.

PRESIDENT: Please propose each amendment separately.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): The Clause, as it is, runs as follows: 'If the petitioner is the husband and his prayer has been granted, the court shall, except where the respondent lives in...' I propose that in place of the word 'shall' the word 'may' be put in. My reasons are that the petitioner, to secure a divorce, has to put forward in the petition valid and tenable grounds, and when these grounds are proved, the petitioner should not be put to the necessity, in certain cases at least, of having to pay compensation. For example, in the amendment that has been passed yesterday, there are the words 'habitual cruelty.' Supposing the husband puts in a petition for the divorce of his wife on the ground of habitual cruelty on the part of the

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[Rao Bahadur K. A. Krishna Aiyangar].

wife towards the husband. As soon as the husband has proved and convinced the court of the habitual cruelty of his wife he must be absolved from the necessity of paying any compensation to the wife. When the word 'shall' is used, the court has no discretion in the matter of the award of compensation. Their hands are tied and they have to award some compensation or other to the respondent in all cases. Therefore, I propose that the word "may" be substituted for the word "shall." That is the first amendment that I put forward with reference to sub-clause (*a*).

MR. T. LAKSHMANA PILLAI (*Nominated*): I second it.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I oppose the amendment. It shall not be discretionary upon the court to award compensation, because even in the existing Nayar Regulation—

PRESIDENT: I think you mean to say 'discretionary upon the court to *refuse* compensation' and not '*award* compensation' as you said.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): To allow or to refuse, must not be discretionary. It must be obligatory. The court must be bound to award compensation in all cases. I wish to emphasise it, because, the court has no discretion in the matter even according to the existing law. Moreover, the reason alleged by Mr. Krishna Aiyar is not very sound. Because the type of wives that would be so cruel to the husband as to necessitate such an amendment does not exist in this part of the country. (*Laughter.*)

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): It is contemplated by the amendment that has been accepted by the House.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I think that does not make my argument lose its force. I still repeat that termagants do not exist in this country. (*Laughter.*) Even if a woman shows some little temper—

PRESIDENT: It is *cruelty* that is referred to and not *temper*.

MR T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I say temper, and it will not amount to cruelty. I submit, Sir, that it will take a very long time before women get so cruel that the husbands should go to the court. (*Laughter.*) We have very properly and discreetly recognised the principle that some kind of respect, even amounting to chivalry, may be shown to the fair sex. So let us condone some of these venial faults of women. I therefore oppose the amendment.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I support Mr. Krishna Aiyar's amendment. When we agreed to maintenance allowance being given to the wife till her re-marriage, we thought that the chivalry would not be extended any further. For the purpose of argument we have to assume that the position has become absolutely intolerable in the opinion of the court,

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justifying the dissolution order being passed. Under these circumstances it will hold out a positive premium for misconduct when the courts are not given any discretionary power in the matter of awarding compensation. The facts and the circumstances need not be necessarily the same in all cases. The judge would determine whether it is a fit case for any compensation being awarded or not. In any event, so far as the payment of maintenance allowance is concerned, not merely the sense of chivalry but the absolute sense of justice demands that a lady ought to be maintained whatever be her shortcomings until she marries again, but the region of chivalry should not be extended beyond bare maintenance.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I am sorry I have to oppose the motion of Mr. Krishna Aiyar. I am not, as my friend Mr. T. K. Velu Pillai said, for leaving to the discretion of the court the matter of awarding any compensation or maintenance to an injured wife. As regards the larger question, whether it is possible that he might experience cruelty at the hands of the wife even if such a contingency might arise in the future, we are not justified in enacting anything at present for such a contingency. Undoubtedly, with the development of the law, elsewhere such contingencies have arisen. For, I recollect having read the other day an American report in which the question arose whether the husband had got the right of private defence against the wife when she proceeded to bite him (*laughter*) and a solemn court pronounced judgment in favour of the bearded sex that they had such rights. (*Laughter.*) Such difficult questions have not arisen in our country. It is not therefore necessary to take such cases into consideration.

PRESIDENT: You might starve them.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Such cases have not arisen here. Even if such cases come up, it is not necessary that we should take them into consideration; for, the quantum of compensation that has been fixed is from a penny to Rs. 5,000, and the courts can exercise a large amount of discretion in the matter.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): May I ask Mr. Narayana Pillai whether penny is legal tender in Travancore?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I think it would be, since all of us have sworn allegiance to the King Emperor in the Legislative Council. (*Laughter.*)

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): My position is this. The petitioner is to state in his petition valid grounds and substantiate those grounds to enable him to get a dissolution of marriage. Even though the court finds that the grounds are valid and substantial in every form, the court *is compelled and bound hand and foot* to give some sort of compensation to the wife that will be making

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[Mr. A. Hoogewerf.]

the court stultify itself. In other words, when the petitioner has proved his case he has still to make a payment. That is very hard. Therefore if the court be allowed the liberty to grant compensation or withhold the same, that must satisfy all.

It is not a question of one penny, one anna or one copper cash. But it is a question of principle that when the petitioner has proved his case it must not be left to the court still to mulct him of compensation.

PRESIDENT: I shall put Mr. Krishna Aiyar's amendment to the vote. The amendment is that the word "may" be substituted for the word "shall" in sub-clause 3 (*a*).

The amendment was put to the vote and lost.

MR. A. HOOGEWERF (*Nominated*): Sir, I move that the words " or change of religion " in sub-clause (3) (*a*) be deleted.

I am sure the House will join me in congratulating Mr. A. Govinda Menon in having been created a Knight by Mr. P. K. Narayana Pillai. (*Laughter.*) Posterity will thank Mr. Govinda Menon and the members of this Council for putting a spoke in the wheel of this legislation in the matter of divorce. I thank also Mr. P. K. Narayana Pillai for the liberal clauses in his amended Sections, especially, for placing conversion to another religion at least on a par with adultery. Renouncing Hinduism and embracing another religion does not necessarily mean lowering of status or excommunication. According to present-day notions prevalent among the majority of Nayars, conversion may mean lowering of status. But a Christian or a Mahomedan never feels that he is of a lower status than anybody else. I concede that that feeling is not reciprocated by his Hindu relations; but it must be *open* to those Hindu relations also to change their angle of vision with the advancement of the times and to treat him as one of themselves, notwithstanding a change of faith. If not, you will be raising a barricade against the progressing tendencies of the educated Nayar. I do not plead for forcing the pace or for making the Hindu Nayar yield to his convert brother his status before conversion. All I ask for is not to place a legal impediment in the way of the Hindu brother treating his brother convert on equal terms, when by the advancement of civilisation he may naturally become inclined to do so. The legislature should not ignore the tendency of civilisation and perpetuate by hard and fast rules the existing sentiments which are fast changing. The time was not far removed when England-returned gentlemen were treated, more or less, as outcastes. To-day, everybody knows that it has changed a great deal. The attitude towards the convert to another religion is also undergoing a similar change, although slow. Let us not intercept it by law.

When it comes to a question of compensation, if the cause of the divorce is adultery or change of religion, the wife does not get compensation. If she renounces Hinduism and does not embrace another religion and simply remains irreligious, she gets compensation. But if she embraces another religion, say even Arya Samaj, which accepts the

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authority of the Vedas, but would not accept untouchability, she forfeits her right. This is very hard, and it is in recognition of that hardship that led the liberal framer of the original Bill to *deliberately* omit the provision under consideration. I would therefore request that this provision be removed from this Clause.

MR. JOSEPH PANJIKARAN (*Shertallai*) : Sir, I second the amendment moved by Mr. Hoogewerf not only for the reasons he has stated but also for the reason that, if the provision is retained it will work hardship in other ways also. It may be that the wife had changed her religion and yet the husband and wife continued to live together as man and wife for another ten years and children were born. Subsequently, a petition may be put in. Even then, according to the Section as it is, she should go without any compensation. This will be very hard. For this reason also I support the amendment.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*) : Sir, I also wish to speak a few words in support of the amendment. My main ground is that freedom of conscience is a very sacred thing to every man and woman and that that sacred freedom should not be denied in the case of Nayars. Further, to my mind, to have some religion is better than to have no religion. As the Bill stands, if a husband or a wife turns an atheist or nihilist, he or she gets all the benefits, whereas, if out of his or her own conviction he or she embraces a religion which he or she thinks is a right one, he or she is placed in a worse position than if he or she remains an atheist. Does it not look awkward? I think these two aspects of the question would appeal to the good sense of the Council.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*) : Sir, I oppose the amendment. In doing so, I must say that I fully sympathise with the object of the amendment put forward by my Christian friends. Undoubtedly, it is necessary that freedom of conscience should be allowed to individuals as much as possible. But unfortunately, we have to take into account the circumstances of the country as well as the customs and manners followed by the community concerned. In the community, as at present understood, conversion naturally works a forfeiture of caste, and therefore a person who has become a convert cannot insist upon his or her being allowed to live with the others in the family or to mix with them. It is on that ground that if one of the parties, *i. e.*, the wife, has become a convert to another religion, the other party, *i. e.*, the husband, should not be compelled to live with her, and if she wants to have a divorce on that ground the husband should not be compelled to pay for it. By her act she has made herself unfit to be associated in her house according to the notions and sentiments of the community concerned. Otherwise it will be more or less penalising the husband for thewife having become a convert as she wanted, to exercise freedom of conscience. She is quite at liberty to exercise her freedom of conscience so long as she does not interfere with the freedom of her partner.

MR. A. HOOGEWERF (*Nominated*) : I wish to ask Mr. Paramesvaran Pillai what he has to say in regard to a case of conversion to the Arya Samaj.

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[Mr. T. K. Velu Pillai.]

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): It is another form of Hindu religion. I know that a Nayar does not cease to be a Hindu when he embraces the Arya Samaj.

PRESIDENT: It is only a question of fact and interpretation you put upon the words.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): We mean absolutely no disrespect to the other religions or want of toleration to other religions when we say that the husband should not be penalised for the conversion of the wife. It is on that ground alone that we have provided that if the wife becomes a convert to Christianity or Mahomedanism the husband should not be compelled to maintain her or give her compensation if she desires to separate.

MR. JOSEPH PANJIKARAN (*Shertallai*): May I ask Mr. Paramesvaran Pillai what he has to say with regard to cases where the husband and the wife after the latter has become a convert have lived as man and wife?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Upon the ground of change of religion alone, the divorce could be granted without compensation.

MR. A. HOOGEWERF (*Nominated*): What will happen if she renounces all religions and does not embrace any religion?

MR K. PARAMESVARAN PILLAI (*Tiruvalla*): She must become a convert to another religion.

MR. A. HOOGEWERF (*Nominated*): Suppose she does not believe in any religion and thus remains neutral. (*Laughter.*)

PRESIDENT: The Clause does not contemplate such cases. It contemplates only cases where there has been a change of religion.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Sir, I am exceedingly happy to accord my enthusiastic support to the view taken by my friend Mr. K. Paramesvaran Pillai. I am exceedingly glad to see that although Mr. Paramesvaran Pillai is generally in favour of allowing full liberty of conscience, he has observed that the feelings and sentiments of the community concerned are very important and it is on those sound lines that Mr. Paramesvaran Pillai has objected to the amendment. I can quite understand the feelings of some gentlemen when they see the words adultery and change of religion occurring in the same sentence. But, I consider it, Sir, nothing more than an accident. If we say adultery or conversion to another religion A, B or C, the adherents of those religions may have some justification in making the complaint. But a change of religion whether it is in the case of Hindu, Christian or Mahomedan is considered as a great sin by his co-religionists. Of all offences apostacy was and is the most heinous one. There has been adultery in the world for centuries; but we find here—

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MR. A. HOOGEWERF (*Nominated*) : Does Mr. Velu Pillai try to maintain that if a man is born a Christian he is bound to die a Christian, and if a man is born a Hindu, he is bound to die a Hindu, and if not, he will go to hell?

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*) : I am not an authority on all religions and I would not even wish to be an authority on hell. (*Laughter.*) But I may say for Mr. Hoogewerf's edification that if a person is trained in a certain religion and if he learns that religion carefully and conforms to what is being done by his co-religionists, he will never go to hell.

MR. JOSEPH PANJIKARAN (*Shertallai*) : May I know whether he prefers an act of adultery to change of religion?

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): For that matter I would not like either adultery or change of religion. I detest both.

MR. JOSEPH PANJIKARAN (*Shertallai*): 'Living in adultery' is the reason that is given for awarding compensation. But as a reason for dissolution, adultery is sufficient. So I wish to know whether he prefers adultery to change of religion.

Mr. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*) : It is for the courts to decide it. I do not observe the functions of the courts just now. I am here standing before the Council and offering opinion in certain weighty matters. I am prepared to sympathise with the views that have been already explained. But I am only stating for the information of my friends who belong to other religions and other communities that there is absolutely no insult contemplated in the Section. It is the husband that has got the greatest incentive to take steps to prevent adultery. In the same way it is the adherents of religion that are most concerned in preventing apostacy. If it has been said that conversion to a particular religion would entail this result I would certainly sympathise. I find so many questions coming from different parts of the House. I want to add that although adultery was not unknown in prehistoric times it was not punished so much as apostacy. We have heard of people burnt to death for changing their religions, not only in one continent but in all continents. History teaches us that apostacy is not less heinous than adultery. I am making these observations to show that there is no disrespect or insult contemplated which may affect another religion. The Select Committee has put in this word from the standpoint of the Hindu and the Nair. I may also add that when the Ezhava Bill was discussed the identical question was raised and our Ezhava brothers also took their stand on the same principles.

MR. A. HOOGEWERF (*Nominated*): Have the Ezhava brethren not gone one step farther in the matter of inheritance?

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*) : It is quite irrelevant. We are not discussing the law of inheritance.

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[Mr. P. K. Narayana Pillai.]

PRESIDENT: Mr. Hoogewerf wants to know why, if the Ezhava community is *not* prepared, the Nayar community should also be *not* prepared.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I may say, Sir, if in any particular thing any community is prepared to take a reasonable stand I am prepared to agree. If the Ezhava has got something to teach us, I am prepared to follow it. The Hindu religion is common to the Nayar, the Brahmin and the Ezhava. I do not want to take up the time of the Council. I may say, as a member of the Select Committee, as one who had the advantage of discussing the matter with the seventeen members of the Select Committee, there is absolutely no injustice or disrespect intended to any community and no meaning should be read into the position of words.

MR. P. T. THOMAS (*Kottayam*): I have only to raise a technical objection, *viz.*, that this question was considered by this House on a previous day under Section 5. It was decided then that it might be deleted.

PRESIDENT: It was not in regard to compensation, but dissolution of marriages.

MR. P. T. THOMAS (*Kottayam*): In regard to *compensation*. It is stated in the clause that "when the petitioner is the husband, he shall, in all cases, offer in the petition reasonable compensation to the respondent, except where such respondent has renounced Hinduism and has embraced another religion."

PRESIDENT: That was not discussed.

MR. P. T. THOMAS (*Kottayam*): Whether it was discussed or not, what I submit is that a question was raised in this Council and it was decided that that clause be deleted. That is all my objection. When that has been decided by the Council I think this cannot be discussed now.

PRESIDENT: I have considered it and my ruling is that the question can be discussed.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I wish also to oppose the amendment proposed. Sir, in matters of social legislation it is not the highest philosophy that is to weigh, but the sentiments of the community affected will have to be taken into consideration. If in the Ezhava Bill, when it was discussed, it was found impossible to give effect to the amendments proposed by some of our brethren, I say the position is still stronger with respect to the Nayar Regulation Amendment Bill that is now before the Council. For, the interests of the community are interlocked to a considerable extent with the interests of other communities, and as such, the community itself probably may not be justified in the matter of changing a particular practice without taking into consideration the wishes and inclinations of other people. That is one objection.

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Then, after all, it is a question to be viewed from the standpoint of the entire community. This appears to have been the principle adopted by the British Indian Legislature. We have got, for example, in the British Indian Act, known as The Native Converts Marriage Dissolution Act, that if a native becomes a Christian he may petition in a court and ultimately get a dissolution from his native wife who happens to be a Hindu. If conversion does not get encouragement from the standpoint of Christian law, I fail to see why the less advanced communities of other parts of India should be found fault with if they adhere strictly to their own religion. I am submitting, therefore, that it is not from the pinnacle of religious philosophy that we are to view this question. If our friends are in a position to adduce any proof that the community as a whole, taking also into consideration other communities interested in the Nayar community, is to have the benefit of absolute freedom of religion, freedom of conscience, and all those kindred glorious principles, I will hear them. But the whole community is not prepared for this and hence I oppose the amendment.

MR. JOSEPH PANJIKARAN (*Shertallai*): May I ask whether absolute freedom of conscience was not put in the Draft Bill, and whether any member spoke against that when the general principles of the Bill were discussed?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I know, Sir, whether this is a request for information?

MR. JOSEPH PANJIKARAN (*Shertallai*): Yes.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) I cannot answer unless he puts the copies of the proceedings in my hands. I cannot answer off-hand.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I wish only to point out that when Section 5 of the Regulation has been accepted, the principle that change of religion works out a dissolution of marriage has also been accepted. We are now only at the smaller question whether a money compensation need be paid or not. The one is a larger question involving higher principles and the other a smaller one where money alone is the question. Yet we have strained our neck like a camel.

MR. A. HOOGEWERF (*Nominated*): Sir, I anticipated all these objections and much more when I made my first speech. (*Laughter.*) But I did not quite anticipate an objection from my friend Mr. K. Paramesvaran Pillai. I might exclaim "*et tu Brute*!" A man who has been to England and travelled far and wide and has high ideas of religion—

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I rise to a point of order. I wish to know whether the character and conduct of any particular member of the House can be dwelt upon by another member.

PRESIDENT: I do not think he is saying anything disparaging.

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[Mr. K. Paramesvaran Pillai.]

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): His going to England is not relevant to the discussion.

PRESIDENT: In Mr. Hoogewerf's opinion going to England enlarges a man's views.

MR. A. HOOGEWERF (*Nominated*): The whole discussion turns upon caste.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): No, upon religion.

MR. A. HOOGEWERF (*Nominated*): It is because the convert is looked upon as an outcaste in the family, as far as I understand, that my friends stand against conversion. To my question, whether the Arya Samajist is on a par with a convert to another religion, I did not get a satisfactory answer.

PRESIDENT: That question does not arise.

MR. A. HOOGEWERF (*Nominated*): My argument is that the Arya Samajist is just as much an outcaste as the Christian or the Mahomedan or the Ezhava. Now, Mr. Velu Pillai who has had a comparative study of all religions has pronounced his dictum that everybody who observes his religion, no matter what that religion is, will gain salvation, even if he has no religion. I am not quite sure, however, whether he said this.

PRESIDENT: He did not say so.

MR. A. HOOGEWERF (*Nominated*): I beg his pardon. I withdraw that portion. All that I say is, as I said before, that caste is the stone of offence and the rock of scandal in the family. The argument put forward on the other side does not satisfy me.

The motion was put to the vote and lost.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Sir, I wish to propose an amendment to sub-clause (3) (*b*). I wish to add after the word "granted", the words "on the ground of adultery, habitual cruelty or change of religion of the husband." The reason for this amendment is this. According to the amendment of Mr. Govinda Menon which was accepted by this Council, a dissolution can be had on the grounds "insanity, incurable disease, incompatibility of temperament, or change of religion", etc. Now these may be roughly brought under two classifications; one is a cause for which the husband is not responsible, and the other is that in which husband misconducts himself or becomes a convert to some other religion deliberately. It appears to me that it is quite proper that, where the husband has changed his religion or has been habitually cruel to his wife or committed adultery, the wife should be entitled to claim compensation also along with divorce. But, on the other hand, if the husband is insane or has become subject to an incurable disease and if the wife wants to desert him it is very hard,

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especially when he needs her attention most, that he be compelled to give compensation also. He has also to give compensation in those cases up to Rs. 5,000 or give her maintenance. There are other defects also. For instance, one of the grounds of divorce is incurable disease. An incurable disease may be anything. According to some it is diabetes. Rheumatism is considered an incurable disease. A man may be struck by paralysis and may be laid up. Under these circumstances, if the wife wants the luxury of a divorce and at the same time wants to insist upon a compensation or maintenance, I think it is unreasonable and cruel. I would therefore submit that in these special cases, no compensation need be paid. On these grounds I make the amendment for the consideration of the House.

RAO BAHADUR K. A KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): May I know from Mr. Paramesvaran Pillai, before he resumes his seat, whether he simply brings in the word "adultery" or copies the language "lives in adultery."

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Not "lives in adultery." The previous clause has been with respect to compensation; that has not been accepted.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumannur*): I second the amendment.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I beg to oppose the amendment. Evidently the conception of the learned mover of this amendment seems to be this, that a wife has to be maintained only with the prospect of securing some sort of assistance from her in the interests of the husband. Hence he points out that if the wife separates herself from the husband, she should naturally forego the rights of maintenance except where the husband is personally liable for such affairs. In the case of insanity, incurable disease, and incompatibility of temperament which are three of the main heads put before the House by Mr. A. G. Menon, Mr. Paramesvaran Pillai thinks that when the wife puts in a petition for divorce she should not be entitled to maintenance. I am far from agreeing with him. In the matter of insanity, it is in the interests of the wife and her personal safety that she should as far as possible keep away from the husband. In the case of cruelty, the cruel acts are consciously perpetrated by the husband; in the case of insanity it is unconsciously perpetrated. In the case of diseases of the venereal variety and of the cutaneous kind, I would submit that they are probably the fruits of the past actions of a bad man and not the result of the present actions. As we Hindus believe in the doctrines of *karma*, we are obliged to believe, I would say, that the wife is not responsible for these things. If the husband possesses property, if he is an innocent person, he may be compelled to devote a portion to the maintenance of the wife till she finds another support. In the case of wives under the Nayar Regulation they are practically to be placed in the bel-jar of the husband's custody. Such being th case, here is the woman who has been mated to a person who, throug no fault of hers, has to be kept at a distance, but who alone has to

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[Mr. T. K. Velu Pillai].

depended on for her support. No doubt, the conditions of insanity, incurable disease and incompatibility of temperament are nebulous and hazy conditions—all these, I would submit, must still control the situation. At the same time the court is given the discretion to graduate the degree of compensation according as the situation would demand. In this view of the matter I am sorry I have to oppose the amendment proposed by my friend.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I also oppose the amendment but for different reasons. My friend Mr. P. K. Narayana Pillai like a very able lawyer has discussed the principles of criminal liability in contracting incurable diseases. He has like a great scholar placed before the House some principles relating to the law of *karma*. I am sorry this House will not be able to take a stand either on the law of *karma* or on the principles of criminal liability. I would put the case on another ground. I have not come across in my short experience of the world the case of a woman trying to divorce her husband because he became ill. Sir, it is to the glory of womanhood that, when the husband contracts an incurable and dangerous disease, the wife's affection will centre itself upon that unfortunate and helpless husband. So long as our religious conceptions are not entirely removed, I do not apprehend that there will be even a single instance of a woman coming to pray for a divorce on the ground that the husband is a diabetic patient or has got a venereal disease. Whatever his fault, once he becomes imbecile, the wife will be more solicitous of helping him than she would otherwise be.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): If that be the case, why should not the Section be comprehensive?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I am certainly not obliged to answer that question. The Section is not of my making. It is the product of the very careful attention bestowed upon it by several persons. I do not want to estop others from answering that. I do not propose to answer.

Even in the case of incurable disease, it may be noticed that a remedy is available only when the husband is possessed of sufficient property. Now, Sir, even under the Hindu law we find that people who suffer from congenital diseases cannot get their share of inheritance. It may or may not be due to the law of *karma*. But it is certainly due to the principles of law that apply in a particular disease. Now when society has an interest in preventing women from going about begging from door to door when the husband is possessed of property, I am for recognising that principle. Although a woman is bad enough to ask for a divorce, considering the fact that even this helpless husband cannot give her the precious treasure of virginity, considering also the fact that society has an interest in preventing vagrancy, considering also the fact that a decree will be given only when the husband has got enough money, I am for opposing the amendment.

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MR. C. SANKARA MENON (*Quilon*): Sir, I support the amendment of Mr. Paramesvaran Pillai. Mr. Velu Pillai has stated—

PRESIDENT: Louder, please.

MR. C. SANKARA MENON (*Quilon*): Mr. Velu Pillai has stated that it is not likely that, when the husband is ill or suffering from an incurable disease, the wife would desert him. The working of the Regulation I of 1088 shows that most of the petitions for divorce are by the wife.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): May I know whether Mr. Sankara Menon is able to give facts and figures? How many petitions, in how many years?

MR. C. SANKARA MENON (*Quilon*): I can only say from my experience as a vakil—since the Regulation was passed. I cannot give statistics. That has been the experience of almost all the vakils. I have not taken statistics, but I know as a matter of fact—that is what has happened in my experience since 1088—that most of the petitions, more than 90 per cent. of them, are by the wife. Therefore, under those circumstances, I think—

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Is it with respect to the Quilon District?

MR. C. SANKARA MENON (*Quilon*): Yes, not only that. So far as Trivandrum is concerned Mr. G. Paramesvaran Pillai has told me that it is the case.

PRESIDENT: He has not spoken.

MR. C. SANKARA MENON (*Quilon*): Therefore—

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I wish to correct my friend. I never said *likely*. I only said that it would not be common. (*Laughter.*) That was my meaning.

MR. C. SANKARA MENON (*Quilon*): I know of several cases where parties had been living as man and wife for more than 20 and 30 years, and where the wife deserted the husband when he was very old, and when he had invested all his properties in the name of his wife and children, and taken another husband.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Is Mr. Sankara Menon able to give us the reasons for all those desertions?

MR. C. SANKARA MENON (*Quilon*): I can only say that, in many cases, she marries another person. Soon after the dissolution is granted, she goes to another man.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Is he in a position to throw any light upon the divorce effected, and the reasons which led to it?

MR. C. SANKARA MENON (*Quilon*): No enquiry has been conducted and we have to infer it from the conduct of the parties.

PRESIDENT: Order, order.

MR. C. SANKARA MENON (*Quilon*): Therefore, it is rather not reasonable to penalise the husband for no fault of his, and therefore, except in the cases referred to by Mr. Paramesvaran Pillai, I do not

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[Mr. A Hoogewerf.]

think that compensation could be given to the woman. On this ground I support the amendment.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I wish to point out that one principle has been ignored during the whole course of the discussion. When a husband files a petition for divorce, whatever the grounds be, whether it is the fault of the wife or the misfortune of the wife, the court shall award compensation. Mr. Narayana Pillai went to the length of saying it might be a penny. But nevertheless, on principle, compensation should be given. Now, whether it is the misfortune of the husband or the fault of the husband, how can a line of difference be drawn? What is sauce for one side must be sauce for the other side also. On that principle, I am submitting that the House will be stultifying itself, if it thinks that no compensation shall be allowed except on specific grounds when the petitioner is the husband.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): May I ask Mr. Krishna Aiyar whether the Statutes in Travancore treat men and women similarly?

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikappalli*): Certainly not.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Is it not also the duty of the husband to maintain the wife according to Travancore law as well as Hindu law?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Sir, we are now legislating for a whole community and it is no argument to say that cases of the kind contemplated are rather few, or that such cases may not arise at all. We must also take into consideration extreme cases and provide for them when we legislate for a whole community. Further, that the wife will not bring a suit for divorce, on the ground of the husband being subjected to incurable disease is an argument which proves too much, because in that case there will be no need for providing for a divorce on that ground at all. When we legislate we must foresee the consequences of it, even though, such cases may be very extreme or very rare. Now my friend Mr. P. K. Narayana Pillai pointed out the case of a lunatic in whose case the woman would want personal protection. All that I have got to say is, that it is not impossible to get personal protection from a lunatic husband otherwise than by obtaining a divorce from him. She can remain with him. She will be maintained from his estate and for her protection she can seek remedy otherwise than by divorce and I cannot conceive that my friend Mr. Narayana Pillai cannot think of other means of protecting the wife when her husband is a lunatic than by divorce.

MR. A. HOOGEWERF (*Nominated*): Can he be not sent to the Lunatic Asylum? (*Laughter.*)

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[MR. A. Govinda Menon.]

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Then both Mr. Velu Pillai and Mr. Narayana Pillai spoke of contagious diseases. The expression unfortunately used in this connection is not contageous disease. In some cases, in the interests of the health of the society it may be necessary to segregate the wife from the husband. But the expression used in this Section is incurable disease. Incurable disease need not necessarily be contageous disease, and in many cases, probably, incurable diseases are not contageous diseases. There may be very many diseases which are not contageous and still which are incurable, and therefore—

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): May I know whether Mr. Paramesvaran Pillai is not alive to the necessity of preventing the propagation of diseases, if the diseases are incurable and whether diseases are to be allowed to be transmitted to children?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): That is a thing for the Health Department to take into consideration. If I am approached on that point I shall bestow the fullest consideration upon it. But, here, we are providing for divorce and compensation in the case of a husband and a wife in a community, and therefore, when we provide for compensation and maintenance and all those things, we have to take into consideration all the circumstances under which a divorce is sought to be obtained. Attention has also been drawn to the point that when a woman is unwilling to live with her husband she need not be maintained. Undoubtedly she will be entitled to maintenance even without obtaining a divorce. In most of such cases, I should consider that divorce is purely a sort of luxury on the part of the wife. She could live with the husband and attend on him and secure her maintenance from his estate and not go to the extreme step of obtaining a divorce and also there is no need for her to get compensation up to Rs. 5,000. It appears to me therefore that there is no point in the opposition to the amendment.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): May I know whether he has seen the provision in the Parsi Divorce Act which has been referred to by him and by many others, and whether there is provision in that act enabling a court in all cases of divorce to pay a sort of alimony without exception. It rests with the court to pay or not—

PRESIDENT: You must not argue. You must put a question.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): That is, when the divorce is at the instance of the husband, whatever may be the grounds of the divorce, some maintenance must be allowed to the wife. That has nothing to do with the case in hand here.

MR A. GOVINDA MENON (*Alangad* cum *Parur*): That may not be proper in all cases—

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[Mr. Joseph Panjikaran.]

PRESIDENT: Are you arguing or putting a question or explaining? What is it?

I shall now put Mr. Paramesvaran Pillai's amendment to the vote of the House.

The amendment is that after the word 'granted' in line 1 of paragraph (*b*) of sub-clause (3,) the words 'on the ground of adultery, habitual cruelty, or change of religion of the husband' be added.

The amendment was carried 21 voting *for* and 8 *against*.

MR. JOSEPH PANJIKARAN (*Shertallai*): I propose the following amendment to Clause (3).

PRESIDENT: Is it in paragraph (*b*) of Clause 3?

MR. JOSEPH PANJIKARAN (*Shertallai*): Clause 3, paragraph (*a*).

PRESIDENT: Order please.

MR. JOSEPH PANJIKARAN (*Shertallai*): Except in cases 'when she lives in adultery.' That was what Mr. Narayana Pillai put before the Council.

PRESIDENT: 'Except where the respondent lives in adultery.'

MR. JOSEPH PANJIKARAN (*Shertallai*): Yes, I propose that 'where the respondent lives in adultery' be deleted and that the printed thing, as it was, be accepted. That is "when the respondent lives in" be deleted and "except in the case of adultery" be substituted.

PRESIDENT: Then how will the Clause run?

MR. JOSEPH PANJIKARAN (*Shertallai*): At the time of passing the order referred to in sub-clause (3) (*a*) "if the petitioner is the husband and his prayer has been granted, the court shall, except in the case of adultery or change of religion award to the wife such compensation not exceeding Rs. 5,000."

PRESIDENT: You want the words "in the case of adultery or change of religion" to be substituted.

MR. JOSEPH PANJIKARAN (*Shertallai*): That is what has been put in by my friend Mr. Narayana Pillai. What I propose is that 'lives in adultery' be deleted.

PRESIDENT: That is to say, you want "in case of adultery or change of religion" to be substituted for the words "where the respondent lives in adultery or has changed his religion." Is that your amendment?

MR. JOSEPH PANJIKARAN (*Shertallai*): Yes.

PRESIDENT: Have you anything to say?

MR. JOSEPH PANJIKARAN (*Shertallai*): Clause 5 has already been accepted. So, if the husband puts in a petition for dissolution on the ground of adultery, according to law he will be entitled to get a dissolution of marriage. In such a case, the question is, is he bound to

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pay compensation to the wife or is he also to prove that she is living in adultery, to refuse compensation? My point is, when one act of adultery is sufficient to work up a dissolution, why should there be the proof of habitual adultery to deprive her of compensation? Moreover, the expression "lives in adultery" does not seem to be happy. It may be very difficult for a court of law to decide what living in adultery exactly means. On these grounds I propose that the words "lives in adultery or has changed his religion" be deleted and the words "in case of adultery or change of religion" be substituted.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I point out to Mr. Joseph Panjikaran that the Code of Criminal Procedure, Section 336, explains "living in adultery"?

PRESIDENT: Mr. P. K. Narayana Pillai has already stated it.

MR. JOSEPH PANJIKARAN (*Shertallai*): That explanation relates only to the expounding of the expression "lives in adultery." Anyhow, the question whether she should be given compensation if she is put off for one act of adultery, still remains. On that ground I propose that the words "in case of adultery or change of religion" be accepted.

PRESIDENT: Is that amendment seconded?

THE REV. FR. KURIAKOSE VETTIKKAPALLI (*Todupuzha cum Kunnatnad*): I second it.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I oppose the amendment proposed by Mr. Joseph Panjikaran. Sir, the disqualification for any maintenance allotment to be given by the husband rests not upon any single act as the law stands at present. "The wife is not entitled to get any maintenance from the husband if she lives in adultery:" that is the language used in the Nayar Regulation Amendment Bill. I spoke of Criminal Law also. There, the language is that she forfeits her maintenance only if she lives in adultery. Mr. A. Govinda Menon's amendment to Clause 5 simply speaks of adultery. It enables any particular party to present a petition on the ground of adultery. But the quantum of adultery that would justify a court to effect a divorce must be adequate.

MR. JOSEPH PANJIKARAN (*Shertallai*): So far as divorce is concerned, one act of adultery is sufficient.

RAO BAHADUR K. A KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): May I ask my friend to tell us what part of the Regulation provides for the quantum of adultery? So far as dissolution is concerned, adultery is sufficient. As regards the question of disqualification for getting maintenance, I thought my friend was referring to a quantum of adultery.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): With respect to that statement, if the matter is not clear, except where it is made out that the wife is living in adultery, no divorce shall be granted on the ground of adultery.

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[President.]

PRESIDENT: That Section has already been passed.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): That Section, I am submitting, is controlled by this Section. And even if the ground for a dissolution is made out, her maintenance allowance should not be stopped. That is her present right according to this amendment. So in spite of the objection of my friend Mr. Joseph Panjikaran, I am sorry I cannot support the amendment. The only other objection I have to meet is that the language is unhappy. I may draw attention to the fact that it is identical with the language in the Criminal Law and the existing Nayar Regulation. Mr. A. Govinda Menon's amendment, *i. e.*, Clause 5, does not say that a single act of adultery will constitute a ground for divorce. Generally a person is entitled to maintenance even though there is a charge of adultery.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I beg to support the amendment. In the first place, the clause that has been accepted is that divorce shall be granted on several grounds. Adultery is one of them. It is nowhere stated, as my friend put it, as to what quantum of adultery would constitute "living in adultery." Therefore even a single act will be quite sufficient. In that Clause and the Clause that we are considering, it is stated "if the petitioner is the husband and the prayer has been granted." Therefore the Clause refers only to the amount of compensation and not to the dissolution itself. Lastly, if we go to sub-clause (3) (*b*), Mr. Paramesvaran Pillai's amendment has been carried, namely, that if the husband is guilty of adultery or cruelty or change of religion he must pay compensation. There again, it is not stated as to whether he should live in adultery with another woman or whether a single act of adultery on his part would be quite enough.

MR. K. PARAMESVARAN PILLAI (*Thiruvalla*): That Clause says that if dissolution is obtained on any of the grounds other than those mentioned, no compensation need be given.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): That is what I say. If compensation need be paid by the husband, the ground of dissolution is adultery. What I say is that dissolution is granted if the husband is guilty of adultery and it is nowhere stated as to the manner in which he should be found guilty, namely, whether he was living openly in adultery, or whether he was guilty of a single or casual lapse. I do not see why we should make a particular distinction and saddle the husband to give compensation when the wife is guilty of adultery, whether it may be one act or more. I think Mr. Joseph Panjikaran's amendment is perfectly reasonable.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Is Mr. Subba Aiyar supporting the motion?

PRESIDENT: Yes.

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MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I oppose the amendment. In the case of dissolution of marriage, undoubtedly, the Section as adopted by this Council does not say that a dissolution could be had only on the ground of living in adultery. But one act of adultery would probably be sufficient for the purpose of obtaining a divorce. But we have thought it expedient to make a distinction in the case of maintenance So far as my personal opinion is concerned, it appears to me that, even where a divorce is obtained by the husband on the ground of adultery on the part of the wife, the wife ought to be maintained for two reasons. In the first place, I thought that would avoid an enquiry into the conduct of the wife when she consents to the divorce. Secondly, I thought that even though adultery may be a ground for divorce, still on public grounds, it would not be expedient to deny her compensation, which is the same thing as maintenance to her, because, having been the wife of a man and having been divorced she should still live and should not be thrown into the streets. But as a compromise I have accepted this alteration in the clause as 'living in adultery', because if you deny a woman, who has been guilty of one act of adultery, maintenance or compensation which would enable her to live cleanly in after-life, you will probably be driving her to continue to live in adultery. So that, on public grounds and in the interests of the community, I think it better that only a woman *living in adultery* is denied maintenance than one who has shown some lapses in life. To err is human. The husband is not therefore compelled to keep her as his wife, but nevertheless, having taken her as his wife he must suffer the consequences of it and prevent her from going into the streets and living in adultery. But if on the other hand she chooses to continue to live in adultery, then I think it will be a sufficient ground for discontinuing her maintenance, and not otherwise.

Therefore I think in the interests of the community as a whole, as also in the interests of public morality and in the interests of the individual concerned, compensation should not be denied to a woman, because she has been divorced for a single act of adultery, unless she continues to live in adultery. Otherwise, you will be driving her to live in adultery in most cases.

MR. JOSEPH PANJIKARAN (*Shertallai*): Sir, my friend Mr. P. K. Narayana Pillai's arguments were whether one act of adultery would be sufficient—

PRESIDENT: A little louder, please.

MR. JOSEPH PANJIKARAN (*Shertallai*): Mr. P. K. Narayana Pillai raised a question whether one act of adultery would be sufficient to effect a dissolution. It seems to me that the expression used in Clause 5, namely, the word "adultery", would not be explained as 'living in adultery'. I do not think that the word adultery in Clause 5 is capable of that interpretation which he has been trying to put upon it.

PRESIDENT: He does not say that the word "adultery" means 'living in adultery.'

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[President.]

MR. JOSEPH PANJIKARAN (*Shertallai*): My point is that, if for one act of adultery a woman can be put off, I do not see the logic of giving compensation to her unless it can also be proved that she was living in adultery. So I must press my amendment.

PRESIDENT: I will put this amendment to the vote.

Mr. Joseph Panjikaran's amendment is that, for the words "where the respondent lives in adultery or has changed his religion" in sub-clause 3 (*a*), the words "in the case of adultery or change of religion" be substituted.

The amendment was put to the vote and lost, 12 voting *for* and 18 *against*.

The House adjourned at 5-12 P. M. to meet again at 11-30 the next day.

S. PARAMESVARA AIYAR,

Secretary to the Legislative Council.

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